

five eligible persons nominated by a judicial nominating commission. The commission shall make nominations to fill a vacancy not more than thirty days prior to nor more than sixty days after the occurrence of the vacancy. If the judicial nominating commission has not presented its list of nominees to the governor within sixty days after the occurrence of the vacancy, the governor may make an appointment without the benefit of nominations from the commission."

THE CHAIRMAN: The debate schedule authorizes thirty minutes debate controlled to Delegate Johnson, thirty minutes to Delegate Mudd and thirty minutes of uncontrolled debate.

The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON: The minority members of our Committee are prepared to rest our case on the basis of our report and the previous presentation. We would like to yield back all of our time and request an extension of the uncontrolled debate for the opponents and proponents alike.

Is that appropriate?

THE CHAIRMAN: No. You can call on anyone you like or allocate your time any way you choose.

DELEGATE JOHNSON: Then I plan to make an explanatory statement and then reserve a short time to conclude.

THE CHAIRMAN: That is possible. You may proceed.

DELEGATE JOHNSON: Mr. Chairman, may I request at the outset that this question be divided; I believe that it is easily divisible. The first portion of our amendment goes toward establishing a nominating commission for the appellate court and then we differ with the majority later on also with respect to the manner of selection, that is the manner of final appointment by the governor rather than the alternative.

THE CHAIRMAN: Will you indicate the lines that you think comprise the first question?

DELEGATE JOHNSON: Beginning of course with line 6 through the first word on line 18.

THE CHAIRMAN: The word "vacancy"?

DELEGATE JOHNSON: Yes.

THE CHAIRMAN: Does the Chair understand that in suggesting that division the portion of your amendment embraced in lines 1 to 4 would nevertheless remain unimpaired; in other words, the first question would arise for all of section 5.14, is that correct?

DELEGATE JOHNSON: Yes, with the understanding that we would offer the second part of the amendment subsequent to the action of the Committee on the Whole on the first part.

THE CHAIRMAN: But to determine whether the question is divisible, the Chair has to determine that each portion can stand alone.

In other words, you would still intend to strike out all of section 5.14 and then consider lines 8 down to the first word of 18 and then you would consider the remaining portion of lines 18 to 24?

DELEGATE JOHNSON: We would submit, Mr. Chairman, that it would be in order to do it in that manner. At least we would request the Chair to consider it.

THE CHAIRMAN: I think the Chair would have to rule that it is not properly divisible because the test would be that each could stand alone.

On that basis if the first portion were rejected and the second portion adopted, it would not make sense. Do you follow me? In other words, if the portion from lines 8 to the first word of 18 were not adopted and the portion from the second word of line 18 to the end were adopted then you would have the last sentence taking the place of all of section 5.14 and it would not make any sense. There would be no antecedent.

DELEGATE JOHNSON: We would do it by way of a clarifying amendment. What we would do would be to prepare an amendment that would strike out of the majority report that section beginning with "If the Governor fails", on line 45 of section 5.14.

THE CHAIRMAN: I do not believe the question is divisible in the way you indicate, and the Chair would so rule. The Chair would be willing to permit you to modify the proposed amendment by striking from it everything beginning with the word "If" in line 18. The first part apparently could stand alone. The second could not.

Do you desire to make that modification?

DELEGATE JOHNSON: Yes.